

EXHIBIT “17”

No. 05-2191

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UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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In re:  
The IT Group, Inc., *et al.*,  
Debtors.

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ACCARDI, *et al.*,  
Appellants,  
v.  
IT LITIGATION TRUST, *et al.*,  
Appellees.

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On Appeal From The United States District Court  
For The District Of Delaware,  
Civil Action No. 04-146, Judge Joseph J. Farnan

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### **STANDARD OF REVIEW**

In its review, this Court stands in the shoes of the District Court, applying a clearly erroneous standard to the Bankruptcy Court's findings of fact and a *de novo* standard to its legal conclusions. *American Flint Glass Workers Union v. Anchor Resolution Corp.*, 197 F.3d 76, 80 (3d Cir. 1999). In this case, the decisions by both the District Court and the Bankruptcy Court were based on the legal conclusion that the Participants' Second Amended Complaint failed to state a claim upon which relief could be granted. (App. 64-85 (Bankr. Op., Feb. 3, 2004); App. 55-63 (Dist. Ct. Del. Mem. Op., Mar. 3, 2005).) This Court, therefore, reviews the matter *de novo*. See *American Flint Glass*, 197 F.3d at 80.

A complaint should be dismissed if, accepting all well-pleaded allegations in the complaint as true, and viewing them in the light most favorable to the plaintiff, the plaintiff is not entitled to relief. *Oatway v. American Int'l Group, Inc.*, 325 F.3d 184, 187 (3d Cir. 2003). In determining whether the Participants' Second Amended Complaint fails to state a claim upon which relief can be granted, "the [C]ourt may consider documents which are attached to or submitted with the complaint, as well as legal arguments presented in memorandum or briefs and arguments of counsel." *Pryor v. National Collegiate Athletic Ass'n*, 288 F.3d 548, 560 (3d Cir. 2002).